

1 **TRUST LAW AMENDMENTS**

2 2003 SECOND SPECIAL SESSION

3 STATE OF UTAH

4 **Sponsor: David Clark**

5

LONG TITLE

6 **General Description:**

7
8 This bill makes changes in legislation passed during the 2003 General Session that
9 allowed for the administration of trusts created outside Utah by trustees within Utah,
10 and provided favorable tax provisions.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ allows for the creation of spendthrift trusts in which the settlor of the trust is also a
14 beneficiary;
- 15 ▶ defines resident trusts as trusts with property created in this state or trusts that are
16 administered in this state;
- 17 ▶ exempts income of an irrevocable resident trust from state income taxes under
18 certain circumstances; and
- 19 ▶ allows for the administration of a foreign trust in Utah, and the enforcement of its
20 provisions regardless of its initial validity under Utah law.

21 **Monies Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 This bill takes effect on December 31, 2003, with the exception of Sections 59-10-114
25 and 59-10-202, which take effect on January 1, 2004.

26 **Utah Code Sections Affected:**

27 AMENDS:



- 28 **25-6-14 (Effective 12/31/03)**, as enacted by Chapter 301, Laws of Utah 2003
- 29 **59-10-103 (Effective 01/01/04)**, as last amended by Chapter 301, Laws of Utah 2003
- 30 **59-10-114**, as last amended by Chapters 63 and 299, Laws of Utah 2003
- 31 **59-10-201 (Effective 01/01/04)**, as last amended by Chapter 301, Laws of Utah 2003
- 32 **59-10-202**, as last amended by Chapter 345, Laws of Utah 1995
- 33 **75-2-205 (Effective 12/31/03)**, as last amended by Chapter 301, Laws of Utah 2003
- 34 **75-2-1207 (Effective 12/31/03)**, as last amended by Chapter 301, Laws of Utah 2003
- 35 **75-7-201 (Effective 12/31/03)**, as last amended by Chapter 301, Laws of Utah 2003
- 36 **75-7-202 (Effective 12/31/03)**, as last amended by Chapter 301, Laws of Utah 2003
- 37 **75-7-204 (Effective 12/31/03)**, as last amended by Chapter 301, Laws of Utah 2003
- 38 **75-7-208 (Effective 12/31/03)**, as enacted by Chapter 301, Laws of Utah 2003
- 39 **75-7-402**, as last amended by Chapter 179, Laws of Utah 1992

40 ENACTS:

- 41 **75-2-1209**, Utah Code Annotated 1953
- 42 **75-7-405.5**, Utah Code Annotated 1953

43 REPEALS:

- 44 **75-7-601 (Effective 12/31/03)**, as enacted by Chapter 301, Laws of Utah 2003
- 45 **75-7-602 (Effective 12/31/03)**, as enacted by Chapter 301, Laws of Utah 2003
- 46 **75-7-603 (Effective 12/31/03)**, as enacted by Chapter 301, Laws of Utah 2003



48 *Be it enacted by the Legislature of the state of Utah:*

49 Section 1. Section **25-6-14 (Effective 12/31/03)** is amended to read:

50 **25-6-14 (Effective 12/31/03). Restricting transfers of trust interests.**

51 (1) (a) For trusts created on or after [~~May 5, 2003~~] December 31, 2003, a settlor who in

52 writing irrevocably transfers property in trust to a trust having as trustee a company [as]

53 defined in Subsection 7-5-1(1)(d) who holds some or all of the trust assets in this state in a

54 savings account described in Subsection 7-1-103(29), a certificate of deposit, a brokerage

55 account, a trust company fiduciary account, or account or deposit located in this state that is

56 similar to such an account may provide that the income or principal interest of the settlor as

57 beneficiary of the trust may not be either voluntarily or involuntarily transferred before

58 payment or delivery to the settlor [~~or~~] as beneficiary by the trustee. The provision shall be

59 considered to be a restriction on the transfer of the settlor's beneficial interest in the trust that is
60 enforceable under applicable nonbankruptcy law within the meaning of Section 541(c)(2) of
61 the Bankruptcy Code or successor provision.

62 (b) This Subsection (1) applies to:

63 (i) any form of transfer into trust including:

64 (A) conveyance; or

65 (B) assignment; and

66 (ii) transfers of:

67 (A) personal property; ~~[or]~~

68 (B) interests in personal property~~[-];~~

69 (C) real property; or

70 (D) interests in real property.

71 ~~[(c) This Subsection (1) does not apply to any interest in real property.]~~

72 (2) (a) Except as provided in Subsection (2)(c), if a trust has a restriction as provided in
73 Subsection (1)(a), the following may not satisfy a claim, or liability on it, in either law or
74 equity, out of the ~~[settlor or beneficiary's restricted]~~ settlor's transfer or settlor's beneficial
75 interest in the trust:

76 (i) a creditor of the settlor existing on the date of the transfer;

77 (ii) a person who becomes a creditor of the settlor after the date of transfer; or

78 (iii) another person wishing to satisfy a claim out of the ~~[settlor or beneficiary's]~~
79 settlor's beneficial interest in or transfer to the trust.

80 (b) For the purposes of Subsections (2)(a)(i) and (ii), a creditor includes one holding or
81 seeking to enforce a judgment entered by a court or other body having adjudicative authority as
82 well as one with a right to payment, whether or not reduced to judgment, liquidated,
83 unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable,
84 secured, or unsecured.

85 (c) A restriction provided under Subsection (1) does not prevent a creditor or person
86 described in Subsection (2)(a) from satisfying a claim or liability out of the ~~[settlor or~~
87 ~~beneficiary's restricted]~~ settlor's beneficial interest in or transfer into trust if:

88 (i) the settlor's transfer into trust is made ~~[in whole or in part]~~ with actual intent to
89 hinder, delay, or defraud ~~[creditors or other persons under Subsection 25-6-5(1)(a)]~~ that

90 creditor;

91 (ii) the trust provides that the settlor may revoke or terminate all or part of the trust
92 without the consent of a person who has a substantial beneficial interest in the trust and the
93 interest would be adversely affected by the exercise of the settlor's power to revoke or
94 terminate all or part of the trust;

95 (iii) the trust requires that all or a part of the trust's income or principal, or both must
96 be distributed to the settlor ~~[or]~~ as beneficiary;

97 (iv) at the time of the transfer or any time thereafter, the settlor ~~[or beneficiary]~~ is in
98 default by 30 or more days of making a payment due under a child support judgment or order;

99 (v) the transfer renders the settlor ~~[or beneficiary]~~ insolvent ~~[after the transfer]~~;

100 (vi) at the time of the transfer, or at any time thereafter, the ~~[person]~~ settlor receives
101 public assistance and recovery is allowed under Title 26, Chapter 19, Medical Benefits
102 Recovery Act; ~~[or]~~

103 (vii) at any time before or after the transfer in trust is made, the settlor is or becomes
104 subject to a claim or tax of the state, its agencies, or political subdivisions[-];

105 (viii) if the person seeking to satisfy a claim is a spouse or former spouse to whom the
106 settlor is indebted on account of an agreement or order for the payment of support or alimony
107 or for a division or distribution of property; or

108 (ix) the settlor's transfer is:

109 (A) inconsistent with any written representation made to a creditor of the settlor,
110 including a creditor who obtains a judgment, to induce the creditor of the settlor to enter into a
111 transaction or agreement with the settlor; or

112 (B) in violation of any written agreement, covenant, or security interest between the
113 settlor and the creditor.

114 (d) The applicable statute of limitations for a claim under Subsection (2)(c)(ix) shall be
115 that which applies to the agreement, covenant, security interest or representation rather than the
116 provisions of Subsection (4).

117 ~~[(d)]~~ (e) For the purposes of Subsection (2)(c) "revoke or terminate" does not include:

118 (i) a power to veto a distribution from the trust;

119 (ii) a testamentary special power of appointment or similar power;

120 (iii) the right to receive a distribution of income, principal, or both in the discretion of

121 another, including a trustee other than the settlor, [~~or is~~] an interest in a charitable remainder
122 unitrust or charitable remainder annuity trust as defined in Internal Revenue Code Section 664
123 or successor provision, or [~~is~~] a right to receive principal subject to an ascertainable standard
124 set forth in the trust; or

125 (iv) the power to appoint nonsubordinate advisers or trust protectors who can remove
126 and appoint trustees, who can direct, consent to or disapprove distributions, or is the power to
127 serve as an investment director or appoint an investment director under Subsections
128 75-7-302(13) and (14).

129 (3) The satisfaction of a claim under Subsection (2)(c) is limited to that part of the trust
130 or transfer to which it applies.

131 (4) A cause of action or claim for relief under Subsection (2)(c) is extinguished unless
132 the action is brought by a person who:

133 (a) is a creditor of the settlor on the date of the transfer to trust within the later of:

134 (i) three years after the date the transfer is made; or

135 (ii) one year after the transfer is or reasonably could have been discovered by the
136 person; or

137 (b) becomes a creditor of the settlor after the date of the transfer into trust, within two
138 years after the date the transfer is made.

139 (5) (a) If a trust has a restriction as provided under Subsection (1), the restriction
140 prevents anyone, including a person listed in Subsection (2)(a), from asserting any cause of
141 action or claim for relief against a trustee or anyone involved in the counseling, drafting,
142 preparation, execution, or funding of the trust for:

143 (i) conspiracy to commit a fraudulent conveyance;

144 (ii) aiding and abetting a fraudulent conveyance; or

145 (iii) participating in the trust transaction.

146 (b) A person prevented from asserting a cause of action or claim for relief under this
147 Subsection (5) may assert a cause of action only against:

148 (i) the trust assets; or

149 (ii) the settlor or beneficiary to the extent allowed under Subsection 25-6-5(1)(a).

150 (6) In any action brought under Subsection (2)(c), the burden to prove the matter by
151 clear and convincing evidence shall be upon the creditor.

152 (7) For purposes of this section, the transfer shall be considered to have been made on
153 the date the property was originally transferred in trust.

154 (8) The courts of this state shall have exclusive jurisdiction over any action brought
155 under this section.

156 (9) If a trust or a property transfer to a trust is voided or set aside under Subsection
157 (2)(c), the trust or property transfer shall be voided or set aside only to the extent necessary to
158 satisfy:

159 (a) the settlor's debt to the creditor or other person at whose instance the trust or
160 property transfer is voided or set aside; and

161 (b) the costs and attorney fees allowed by the court.

162 (10) If a trust or a property transfer to a trust is voided or set aside under Subsection
163 (2)(c) and the court is satisfied that the trustee did not act in bad faith in accepting or
164 administering the property that is the subject of the trust:

165 (a) the trustee has a first and paramount lien against the property that is the subject of
166 the trust in an amount equal to the entire cost properly incurred by the trustee in a defense of
167 the action or proceedings to void or set aside the trust or the property transfer, including
168 attorney fees;

169 (b) the trust or property transfer that is voided or set aside is subject to the proper fees,
170 costs, preexisting rights, claims, and interest of the trustee and any predecessor trustee if the
171 trustee and predecessor trustee did not act in bad faith; and

172 (c) any beneficiary, including the settlor, may retain a distribution made by exercising a
173 trust power or discretion vested in the trustee of the trust, if the power or discretion was
174 properly exercised before the commencement of the action or proceeding to void or set aside
175 the trust or property transfer.

176 (11) If at least one trustee is a trust company as defined in Subsection 7-5-1(1)(d), then
177 individuals may also serve as cotrustees.

178 Section 2. Section **59-10-103 (Effective 01/01/04)** is amended to read:

179 **59-10-103 (Effective 01/01/04). Definitions.**

180 (1) As used in this chapter:

181 (a) "Adoption expenses" means:

182 (i) any actual medical and hospital expenses of the mother of the adopted child which

- 183 are incident to the child's birth;
- 184 (ii) any welfare agency fees or costs;
- 185 (iii) any child placement service fees or costs;
- 186 (iv) any legal fees or costs; or
- 187 (v) any other fees or costs relating to an adoption.
- 188 (b) "Adult with a disability" means an individual who:
- 189 (i) is 18 years of age or older;
- 190 (ii) is eligible for services under Title 62A, Chapter 5, Services [tø] for People with
- 191 Disabilities; and
- 192 (iii) is not enrolled in:
- 193 (A) an education program for students with disabilities that is authorized under Section
- 194 53A-15-301; or
- 195 (B) a school established under Title 53A, Chapter 25, Schools for the Deaf and Blind.
- 196 (c) (i) For purposes of Subsection 59-10-114(2)(m), "capital gain transaction" means a
- 197 transaction that results in a:
- 198 (A) short-term capital gain; or
- 199 (B) long-term capital gain.
- 200 (ii) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
- 201 the commission may by rule define the term "transaction."
- 202 (d) "Commercial domicile" means the principal place from which the trade or business
- 203 of a Utah small business corporation is directed or managed.
- 204 (e) "Corporation" includes:
- 205 (i) associations;
- 206 (ii) joint stock companies; and
- 207 (iii) insurance companies.
- 208 (f) "Dependent child with a disability" means an individual 21 years of age or younger
- 209 who:
- 210 (i) (A) is diagnosed by a school district representative under rules adopted by the State
- 211 Board of Education as having a disability classified as:
- 212 (I) autism;
- 213 (II) deafness;

- 214 (III) preschool developmental delay;
- 215 (IV) dual sensory impairment;
- 216 (V) hearing impairment;
- 217 (VI) intellectual disability;
- 218 (VII) multidisability;
- 219 (VIII) orthopedic impairment;
- 220 (IX) other health impairment;
- 221 (X) traumatic brain injury; or
- 222 (XI) visual impairment;
- 223 (B) is not receiving residential services from:
 - 224 (I) the Division of Services for People with Disabilities created under Section
 - 225 62A-5-102; or
 - 226 (II) a school established under Title 53A, Chapter 25, Schools for the Deaf and Blind;
 - 227 and
 - 228 (C) is enrolled in:
 - 229 (I) an education program for students with disabilities that is authorized under Section
 - 230 53A-15-301; or
 - 231 (II) a school established under Title 53A, Chapter 25, Schools for the Deaf and Blind;
 - 232 or
 - 233 (ii) is identified under guidelines of the Department of Health as qualified for:
 - 234 (A) Early Intervention; or
 - 235 (B) Infant Development Services.
 - 236 (g) "Employer," "employee," and "wages" are defined as provided in Section
 - 237 59-10-401.
 - 238 (h) "Fiduciary" means:
 - 239 (i) a guardian;
 - 240 (ii) a trustee;
 - 241 (iii) an executor;
 - 242 (iv) an administrator;
 - 243 (v) a receiver;
 - 244 (vi) a conservator; or

245 (vii) any person acting in any fiduciary capacity for any individual.

246 (i) "Homesteaded land diminished from the Uintah and Ouray Reservation" means the
247 homesteaded land that was held to have been diminished from the Uintah and Ouray
248 Reservation in Hagen v. Utah, 510 U.S. 399 (1994).

249 (j) "Individual" means a natural person and includes aliens and minors.

250 (k) "Irrevocable trust" means a trust in which the settlor may not revoke or terminate
251 all or part of the trust without the consent of a person who has a substantial beneficial interest
252 in the trust and the interest would be adversely affected by the exercise of the settlor's power to
253 revoke or terminate all or part of the trust.

254 (l) For purposes of Subsection 59-10-114(2)(m), "long-term capital gain" is as defined
255 in Section 1222, Internal Revenue Code.

256 (m) "Nonresident individual" means an individual who is not a resident of this state.

257 (n) "Nonresident trust" or "nonresident estate" means a trust or estate which is not a
258 resident estate or trust.

259 (o) (i) "Partnership" includes a syndicate, group, pool, joint venture, or other
260 unincorporated organization:

261 (A) through or by means of which any business, financial operation, or venture is
262 carried on; and

263 (B) which is not, within the meaning of this chapter:

264 (I) a trust;

265 (II) an estate; or

266 (III) a corporation.

267 (ii) "Partnership" does not include any organization not included under the definition of
268 "partnership" in Section 761, Internal Revenue Code.

269 (iii) "Partner" includes a member in a syndicate, group, pool, joint venture, or
270 organization described in Subsection (1)(o)(i).

271 (p) "Qualifying stock" means stock that is:

272 (i) (A) common; or

273 (B) preferred;

274 (ii) as defined by the commission by rule, originally issued to:

275 (A) a resident or nonresident individual; or

276 (B) a partnership if the resident or nonresident individual making a subtraction from
277 federal taxable income in accordance with Subsection 59-10-114(2)(m):
278 (I) was a partner when the stock was issued; and
279 (II) remains a partner until the last day of the taxable year for which the resident or
280 nonresident individual makes the subtraction from federal taxable income in accordance with
281 Subsection 59-10-114(2)(m); and
282 (iii) issued:
283 (A) by a Utah small business corporation;
284 (B) on or after January 1, 2003; and
285 (C) for:
286 (I) money; or
287 (II) other property, except for stock or securities.
288 (q) (i) "Resident individual" means:
289 (A) an individual who is domiciled in this state for any period of time during the
290 taxable year, but only for the duration of the period during which the individual is domiciled in
291 this state; or
292 (B) an individual who is not domiciled in this state but:
293 (I) maintains a permanent place of abode in this state; and
294 (II) spends in the aggregate 183 or more days of the taxable year in this state.
295 (ii) For purposes of ~~[this]~~ Subsection (1)(q)(i)(B), a fraction of a calendar day shall be
296 counted as a whole day.
297 (r) (i) "Resident estate" or "resident trust" means:
298 (A) an estate of a decedent who at death was domiciled in this state;
299 (B) a trust, or a portion of a trust, consisting of property transferred by will of a
300 decedent who at his death was domiciled in this state; or
301 (C) a trust administered in this state.
302 (ii) A trust shall be considered to be administered in this state if:
303 (A) the place of business where the fiduciary transacts ~~[any]~~ a major portion of its
304 administration of the trust is in this state; or
305 (B) the trust states that ~~[it is governed by the laws of this state]~~ this state is the place of
306 administration, and any administration of the trust is done in this state~~[-or]~~.

307 [~~(C) the trust falls within the provisions of Section 75-7-208.~~]

308 (s) For purposes of Subsection 59-10-114(2)(m), "short-term capital gain" is as defined
309 in Section 1222, Internal Revenue Code.

310 (t) "Taxable income" and "state taxable income" are defined as provided in Sections
311 59-10-111, 59-10-112, 59-10-116, 59-10-201.1, and 59-10-204.

312 (u) "Taxpayer" means any individual, estate, or trust or beneficiary of an estate or trust,
313 whose income is subject in whole or part to the tax imposed by this chapter.

314 (v) "Uintah and Ouray Reservation" means the lands recognized as being included
315 within the Uintah and Ouray Reservation in:

316 (i) Hagen v. Utah, 510 U.S. 399 (1994); and

317 (ii) Ute Indian Tribe v. Utah, 114 F.3d 1513 (10th Cir. 1997).

318 (w) (i) "Utah small business corporation" means a corporation that:

319 (A) is a small business corporation as defined in Section 1244(c)(3), Internal Revenue
320 Code;

321 (B) except as provided in Subsection (1)(w)(ii), meets the requirements of Section
322 1244(c)(1)(C), Internal Revenue Code; and

323 (C) has its commercial domicile in this state.

324 (ii) Notwithstanding Subsection (1)(w)(i)(B), the time period described in Section
325 1244(c)(1)(C) and Section 1244(c)(2), Internal Revenue Code, for determining the source of a
326 corporation's aggregate gross receipts shall end on the last day of the taxable year for which the
327 resident or nonresident individual makes a subtraction from federal taxable income in
328 accordance with Subsection 59-10-114(2)(m).

329 (x) "Ute tribal member" means a person who is enrolled as a member of the Ute Indian
330 Tribe of the Uintah and Ouray Reservation.

331 (y) "Ute tribe" means the Ute Indian Tribe of the Uintah and Ouray Reservation.

332 (2) (a) Any term used in this chapter has the same meaning as when used in
333 comparable context in the laws of the United States relating to federal income taxes unless a
334 different meaning is clearly required.

335 (b) Any reference to the Internal Revenue Code or to the laws of the United States shall
336 mean the Internal Revenue Code or other provisions of the laws of the United States relating to
337 federal income taxes that are in effect for the taxable year.

338 (c) Any reference to a specific section of the Internal Revenue Code or other provision
339 of the laws of the United States relating to federal income taxes shall include any
340 corresponding or comparable provisions of the Internal Revenue Code as hereafter amended,
341 redesignated, or reenacted.

342 Section 3. Section **59-10-114** is amended to read:

343 **59-10-114. Additions to and subtractions from federal taxable income of an**
344 **individual.**

345 (1) There shall be added to federal taxable income of a resident or nonresident
346 individual:

347 (a) the amount of any income tax imposed by this or any predecessor Utah individual
348 income tax law and the amount of any income tax imposed by the laws of another state, the
349 District of Columbia, or a possession of the United States, to the extent deducted from federal
350 adjusted gross income, as defined by Section 62, Internal Revenue Code, in determining federal
351 taxable income;

352 (b) a lump sum distribution that the taxpayer does not include in adjusted gross income
353 on the taxpayer's federal individual income tax return for the taxable year;

354 (c) for taxable years beginning on or after January 1, 2002, the amount of a child's
355 income calculated under Subsection (5) that:

356 (i) a parent elects to report on the parent's federal individual income tax return for the
357 taxable year; and

358 (ii) the parent does not include in adjusted gross income on the parent's federal
359 individual income tax return for the taxable year;

360 (d) 25% of the personal exemptions, as defined and calculated in the Internal Revenue
361 Code;

362 (e) a withdrawal from a medical care savings account and any penalty imposed in the
363 taxable year if:

364 (i) the taxpayer did not deduct or include the amounts on the taxpayer's federal
365 individual income tax return pursuant to Section 220, Internal Revenue Code; and

366 (ii) the withdrawal is subject to Subsections 31A-32a-105(1) and (2);

367 (f) the amount refunded to a participant under Title 53B, Chapter 8a, Higher Education
368 Savings Incentive Program, in the year in which the amount is refunded; [~~and~~]

369 (g) except as provided in Subsection (6), for taxable years beginning on or after
370 January 1, 2003, for bonds, notes, and other evidences of indebtedness acquired on or after
371 January 1, 2003, the interest from bonds, notes, and other evidences of indebtedness issued by
372 one or more of the following entities:

373 (i) a state other than this state;

374 (ii) the District of Columbia;

375 (iii) a political subdivision of a state other than this state; or

376 (iv) an agency or instrumentality of an entity described in Subsections (1)(g)(i) through
377 (iii)[-];

378 (h) any distribution received by a resident beneficiary of a resident trust of income that
379 was taxed at the trust level for federal tax purposes, but was subtracted from state taxable
380 income of the trust pursuant to Subsection 59-10-202(2)(c); and

381 (i) any distribution received by a resident beneficiary of a nonresident trust of income
382 that was taxed at the trust level for federal tax purposes, but was not taxed at the trust level by
383 any state.

384 (2) There shall be subtracted from federal taxable income of a resident or nonresident
385 individual:

386 (a) the interest or dividends on obligations or securities of the United States and its
387 possessions or of any authority, commission, or instrumentality of the United States, to the
388 extent includable in gross income for federal income tax purposes but exempt from state
389 income taxes under the laws of the United States, but the amount subtracted under this
390 Subsection (2)(a) shall be reduced by any interest on indebtedness incurred or continued to
391 purchase or carry the obligations or securities described in this Subsection (2)(a), and by any
392 expenses incurred in the production of interest or dividend income described in this Subsection
393 (2)(a) to the extent that such expenses, including amortizable bond premiums, are deductible in
394 determining federal taxable income;

395 (b) (i) except as provided in Subsection (2)(b)(ii), 1/2 of the net amount of any income
396 tax paid or payable to the United States after all allowable credits, as reported on the United
397 States individual income tax return of the taxpayer for the same taxable year; and

398 (ii) notwithstanding Subsection (2)(b)(i), for taxable years beginning on or after
399 January 1, 2001, the amount of a credit or an advance refund amount reported on a resident or

400 nonresident individual's United States individual income tax return allowed as a result of the
401 acceleration of the income tax rate bracket benefit for 2001 in accordance with Section 101,
402 Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, may not be
403 used in calculating the amount described in Subsection (2)(b)(i);

404 (c) the amount of adoption expenses for one of the following taxable years as elected
405 by the resident or nonresident individual:

406 (i) regardless of whether a court issues an order granting the adoption, the taxable year
407 in which the adoption expenses are:

408 (A) paid; or

409 (B) incurred;

410 (ii) the taxable year in which a court issues an order granting the adoption; or

411 (iii) any year in which the resident or nonresident individual may claim the federal
412 adoption expenses credit under Section 23, Internal Revenue Code;

413 (d) amounts received by taxpayers under age 65 as retirement income which, for
414 purposes of this section, means pensions and annuities, paid from an annuity contract
415 purchased by an employer under a plan which meets the requirements of Section 404(a)(2),
416 Internal Revenue Code, or purchased by an employee under a plan which meets the
417 requirements of Section 408, Internal Revenue Code, or paid by the United States, a state, or
418 political subdivision thereof, or the District of Columbia, to the employee involved or the
419 surviving spouse;

420 (e) for each taxpayer age 65 or over before the close of the taxable year, a \$7,500
421 personal retirement exemption;

422 (f) 75% of the amount of the personal exemption, as defined and calculated in the
423 Internal Revenue Code, for each dependent child with a disability and adult with a disability
424 who is claimed as a dependent on a taxpayer's return;

425 (g) any amount included in federal taxable income that was received pursuant to any
426 federal law enacted in 1988 to provide reparation payments, as damages for human suffering,
427 to United States citizens and resident aliens of Japanese ancestry who were interned during
428 World War II;

429 (h) subject to the limitations of Subsection (3)(e), amounts a taxpayer pays during the
430 taxable year for health care insurance, as defined in Title 31A, Chapter 1, General Provisions:

- 431 (i) for:
- 432 (A) the taxpayer;
- 433 (B) the taxpayer's spouse; and
- 434 (C) the taxpayer's dependents; and
- 435 (ii) to the extent the taxpayer does not deduct the amounts under Section 125, 162, or
- 436 213, Internal Revenue Code, in determining federal taxable income for the taxable year;
- 437 (i) (i) except as otherwise provided in this Subsection (2)(i), the amount of a
- 438 contribution made during the taxable year on behalf of the taxpayer to a medical care savings
- 439 account and interest earned on a contribution to a medical care savings account established
- 440 pursuant to Title 31A, Chapter 32a, Medical Care Savings Account Act, to the extent the
- 441 contribution is accepted by the account administrator as provided in the Medical Care Savings
- 442 Account Act, and if the taxpayer did not deduct or include amounts on the taxpayer's federal
- 443 individual income tax return pursuant to Section 220, Internal Revenue Code; and
- 444 (ii) a contribution deductible under this Subsection (2)(i) may not exceed either of the
- 445 following:
- 446 (A) the maximum contribution allowed under the Medical Care Savings Account Act
- 447 for the tax year multiplied by two for taxpayers who file a joint return, if neither spouse is
- 448 covered by health care insurance as defined in Section 31A-1-301 or self-funded plan that
- 449 covers the other spouse, and each spouse has a medical care savings account; or
- 450 (B) the maximum contribution allowed under the Medical Care Savings Account Act
- 451 for the tax year for taxpayers:
- 452 (I) who do not file a joint return; or
- 453 (II) who file a joint return, but do not qualify under Subsection (2)(i)(ii)(A);
- 454 (j) the amount included in federal taxable income that was derived from money paid by
- 455 the taxpayer to the program fund under Title 53B, Chapter 8a, Higher Education Savings
- 456 Incentive Program, not to exceed amounts determined under Subsection 53B-8a-106(1)(d), and
- 457 investment income earned on participation agreements under Subsection 53B-8a-106(1) that is
- 458 included in federal taxable income, but only when the funds are used for qualified higher
- 459 education costs of the beneficiary;
- 460 (k) for taxable years beginning on or after January 1, 2000, any amounts paid for
- 461 premiums for long-term care insurance as defined in Section 31A-1-301 to the extent the

462 amounts paid for long-term care insurance were not deducted under Section 213, Internal
463 Revenue Code, in determining federal taxable income;

464 (l) for taxable years beginning on or after January 1, 2000, if the conditions of
465 Subsection (4)(a) are met, the amount of income derived by a Ute tribal member:

466 (i) during a time period that the Ute tribal member resides on homesteaded land
467 diminished from the Uintah and Ouray Reservation; and

468 (ii) from a source within the Uintah and Ouray Reservation; and

469 (m) (i) for taxable years beginning on or after January 1, 2003, the total amount of a
470 resident or nonresident individual's short-term capital gain or long-term capital gain on a
471 capital gain transaction:

472 (A) that occurs on or after January 1, 2003;

473 (B) if 70% or more of the gross proceeds of the capital gain transaction are expended:

474 (I) to purchase qualifying stock in a Utah small business corporation; and

475 (II) within a 12-month period after the day on which the capital gain transaction occurs;

476 and

477 (C) if, prior to the purchase of the qualifying stock described in Subsection
478 (2)(m)(i)(B)(I), the resident or nonresident individual did not have an ownership interest in the
479 Utah small business corporation that issued the qualifying stock; and

480 (ii) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
481 commission may make rules:

482 (A) defining the term "gross proceeds"; and

483 (B) for purposes of Subsection (2)(m)(i)(C), prescribing the circumstances under which
484 a resident or nonresident individual has an ownership interest in a Utah small business
485 corporation.

486 (3) (a) For purposes of Subsection (2)(d), the amount of retirement income subtracted
487 for taxpayers under 65 shall be the lesser of the amount included in federal taxable income, or
488 \$4,800, except that:

489 (i) for married taxpayers filing joint returns, for each \$1 of adjusted gross income
490 earned over \$32,000, the amount of the retirement income exemption that may be subtracted
491 shall be reduced by 50 cents;

492 (ii) for married taxpayers filing separate returns, for each \$1 of adjusted gross income

493 earned over \$16,000, the amount of the retirement income exemption that may be subtracted
494 shall be reduced by 50 cents; and

495 (iii) for individual taxpayers, for each \$1 of adjusted gross income earned over
496 \$25,000, the amount of the retirement income exemption that may be subtracted shall be
497 reduced by 50 cents.

498 (b) For purposes of Subsection (2)(e), the amount of the personal retirement exemption
499 shall be further reduced according to the following schedule:

500 (i) for married taxpayers filing joint returns, for each \$1 of adjusted gross income
501 earned over \$32,000, the amount of the personal retirement exemption shall be reduced by 50
502 cents;

503 (ii) for married taxpayers filing separate returns, for each \$1 of adjusted gross income
504 earned over \$16,000, the amount of the personal retirement exemption shall be reduced by 50
505 cents; and

506 (iii) for individual taxpayers, for each \$1 of adjusted gross income earned over
507 \$25,000, the amount of the personal retirement exemption shall be reduced by 50 cents.

508 (c) For purposes of Subsections (3)(a) and (b), adjusted gross income shall be
509 calculated by adding to federal adjusted gross income any interest income not otherwise
510 included in federal adjusted gross income.

511 (d) For purposes of determining ownership of items of retirement income common law
512 doctrine will be applied in all cases even though some items may have originated from service
513 or investments in a community property state. Amounts received by the spouse of a living
514 retiree because of the retiree's having been employed in a community property state are not
515 deductible as retirement income of such spouse.

516 (e) For purposes of Subsection (2)(h), a subtraction for an amount paid for health care
517 insurance as defined in Title 31A, Chapter 1, General Provisions, is not allowed:

518 (i) for an amount that is reimbursed or funded in whole or in part by the federal
519 government, the state, or an agency or instrumentality of the federal government or the state;
520 and

521 (ii) for a taxpayer who is eligible to participate in a health plan maintained and funded
522 in whole or in part by the taxpayer's employer or the taxpayer's spouse's employer.

523 (4) (a) A subtraction for an amount described in Subsection (2)(l) is allowed only if:

- 524 (i) the taxpayer is a Ute tribal member; and
- 525 (ii) the governor and the Ute tribe execute and maintain an agreement meeting the
- 526 requirements of this Subsection (4).
- 527 (b) The agreement described in Subsection (4)(a):
- 528 (i) may not:
- 529 (A) authorize the state to impose a tax in addition to a tax imposed under this chapter;
- 530 (B) provide a subtraction under this section greater than or different from the
- 531 subtraction described in Subsection (2)(1); or
- 532 (C) affect the power of the state to establish rates of taxation; and
- 533 (ii) shall:
- 534 (A) provide for the implementation of the subtraction described in Subsection (2)(1);
- 535 (B) be in writing;
- 536 (C) be signed by:
- 537 (I) the governor; and
- 538 (II) the chair of the Business Committee of the Ute tribe;
- 539 (D) be conditioned on obtaining any approval required by federal law; and
- 540 (E) state the effective date of the agreement.
- 541 (c) (i) The governor shall report to the commission by no later than February 1 of each
- 542 year regarding whether or not an agreement meeting the requirements of this Subsection (4) is
- 543 in effect.
- 544 (ii) If an agreement meeting the requirements of this Subsection (4) is terminated, the
- 545 subtraction permitted under Subsection (2)(1) is not allowed for taxable years beginning on or
- 546 after the January 1 following the termination of the agreement.
- 547 (d) For purposes of Subsection (2)(1) and in accordance with Title 63, Chapter 46a,
- 548 Utah Administrative Rulemaking Act, the commission may make rules:
- 549 (i) for determining whether income is derived from a source within the Uintah and
- 550 Ouray Reservation; and
- 551 (ii) that are substantially similar to how federal adjusted gross income derived from
- 552 Utah sources is determined under Section 59-10-117.
- 553 (5) (a) For purposes of this Subsection (5), "Form 8814" means:
- 554 (i) the federal individual income tax Form 8814, Parents' Election To Report Child's

555 Interest and Dividends; or

556 (ii) (A) for taxable years beginning on or after January 1, 2002, a form designated by
557 the commission in accordance with Subsection (5)(a)(ii)(B) as being substantially similar to
558 2000 Form 8814 if for purposes of federal individual income taxes the information contained
559 on 2000 Form 8814 is reported on a form other than Form 8814; and

560 (B) for purposes of Subsection (5)(a)(ii)(A) and in accordance with Title 63, Chapter
561 46a, Utah Administrative Rulemaking Act, the commission may make rules designating a form
562 as being substantially similar to 2000 Form 8814 if for purposes of federal individual income
563 taxes the information contained on 2000 Form 8814 is reported on a form other than Form
564 8814.

565 (b) The amount of a child's income added to adjusted gross income under Subsection
566 (1)(c) is equal to the difference between:

567 (i) the lesser of:

568 (A) the base amount specified on Form 8814; and

569 (B) the sum of the following reported on Form 8814:

570 (I) the child's taxable interest;

571 (II) the child's ordinary dividends; and

572 (III) the child's capital gain distributions; and

573 (ii) the amount not taxed that is specified on Form 8814.

574 (6) Notwithstanding Subsection (1)(g), interest from bonds, notes, and other evidences
575 of indebtedness issued by an entity described in Subsections (1)(g)(i) through (iv) may not be
576 added to federal taxable income of a resident or nonresident individual if, as annually
577 determined by the commission:

578 (a) for an entity described in Subsection (1)(g)(i) or (ii), the entity and all of the
579 political subdivisions, agencies, or instrumentalities of the entity do not impose a tax based on
580 income on any part of the bonds, notes, and other evidences of indebtedness of this state; or

581 (b) for an entity described in Subsection (1)(g)(iii) or (iv), the following do not impose
582 a tax based on income on any part of the bonds, notes, and other evidences of indebtedness of
583 this state:

584 (i) the entity; or

585 (ii) (A) the state in which the entity is located; or

586 (B) the District of Columbia, if the entity is located within the District of Columbia.

587 Section 4. Section **59-10-201 (Effective 01/01/04)** is amended to read:

588 **59-10-201 (Effective 01/01/04). Taxation of resident trusts and estates.**

589 (1) A tax determined in accordance with the rates prescribed by Section 59-10-104 for
590 individuals filing separately is imposed for each taxable year on the state taxable income of
591 each resident estate or trust, except for trusts taxed as corporations.

592 (2) A resident estate or trust shall be allowed the credit provided in Section 59-10-106,
593 relating to an income tax imposed by another state, except that the limitation shall be computed
594 by reference to the taxable income of the estate or trust.

595 (3) The property of the trusts established in Title 53B, Chapter 8a, Higher Education
596 Savings Incentive Program, and Chapter 8b, Higher Education Supplemental Savings Incentive
597 Program, and their income from operations and investments are exempt from all taxation by
598 the state under this chapter.

599 ~~[(4) (a) Income in an irrevocable trust consisting of interest, capital gains, and
600 dividends will not be subject to the tax specified in this section if:]~~

601 ~~[(i) the trust first became a resident trust on or after January 1, 2004; and]~~

602 ~~[(ii) the trustee of the trust is a trust company as defined in Subsection 7-5-1(1)(d).]~~

603 ~~[(b) For the purposes of this section, interest, capital gains, and dividends do not
604 include:]~~

605 ~~[(i) Subchapter S dividends that represent ordinary income;]~~

606 ~~[(ii) noninvestment income from a pass-through entity;]~~

607 ~~[(iii) rents; and]~~

608 ~~[(iv) royalties.]~~

609 Section 5. Section **59-10-202** is amended to read:

610 **59-10-202. Additions to and subtractions from state taxable income of resident or
611 nonresident estate or trust.**

612 (1) There shall be added to federal taxable income of a resident or nonresident estate or
613 trust:

614 (a) the amount of any income tax imposed by this or any predecessor Utah individual
615 income tax law and the amount of any income tax imposed by the laws of another state, the
616 District of Columbia, or a possession of the United States, to the extent deducted from federal

617 adjusted total income as defined in Section 62, Internal Revenue Code, in determining federal
618 taxable income;

619 (b) a lump sum distribution allowable as a deduction under Section 402(d)(3) of the
620 Internal Revenue Code, to the extent deductible under Section 62(a)(8) of the Internal Revenue
621 Code in determining federal adjusted gross income; and

622 (c) the amount of any gain as defined in Section 644(b) of the Internal Revenue Code,
623 to the extent deductible under Section 641(c) of the Internal Revenue Code in determining the
624 federal taxable income of a trust.

625 (2) There shall be subtracted from federal taxable income of a resident or nonresident
626 estate or trust:

627 (a) the interest or dividends on obligations or securities of the United States and its
628 possessions or of any authority, commission, or instrumentality of the United States, to the
629 extent includable in gross income for federal income tax purposes but exempt from state
630 income taxes under the laws of the United States, but the amount subtracted under this
631 Subsection (2) shall be reduced by any interest on indebtedness incurred or continued to
632 purchase or carry the obligations or securities described in this Subsection (2), and by any
633 expenses incurred in the production of interest or dividend income described in this Subsection
634 (2) to the extent that such expenses, including amortizable bond premiums, are deductible in
635 determining federal taxable income; [~~and~~]

636 (b) 1/2 of the net amount of any income tax paid or payable to the United States after
637 all allowable credits, as per the United States fiduciary income tax return of the taxpayer for the
638 same taxable year[-]; and

639 (c) income of an irrevocable resident trust if:

640 (i) the income would not be treated as state taxable income derived from Utah sources
641 under Section 59-10-204 if received by a nonresident trust;

642 (ii) the trust first became a resident trust on or after January 1, 2004;

643 (iii) no assets of the trust were held, at any time after January 1, 2003, in another
644 resident irrevocable trust created by the same settlor or the spouse of the same settlor;

645 (iv) the trustee of the trust is a trust company as defined in Subsection 7-5-1(1)(d);

646 (v) the amount subtracted under this Subsection (2) is reduced to the extent the settlor
647 or any other person is treated as an owner of any portion of the trust under Subtitle A,

648 Subchapter J, Subpart E of the Internal Revenue Code; and
649 (vi) the amount subtracted under this Subsection (2) is reduced by any interest on
650 indebtedness incurred or continued to purchase or carry the assets generating the income
651 described in this Subsection (2), and by any expenses incurred in the production of income
652 described in this Subsection (2), to the extent that those expenses, including amortizable bond
653 premiums, are deductible in determining federal taxable income.

654 Section 6. Section **75-2-205 (Effective 12/31/03)** is amended to read:

655 **75-2-205 (Effective 12/31/03). Decedent's nonprobate transfers to others.**

656 Unless excluded under Section 75-2-208, the value of the augmented estate includes the
657 value of the decedent's nonprobate transfers to others, not included under Section 75-2-204, of
658 any of the types described in this section, in the amount provided respectively for each type of
659 transfer:

660 (1) Property owned or owned in substance by the decedent immediately before death
661 that passed outside probate at the decedent's death. Property included under this category
662 consists of the property described in this Subsection (1).

663 (a) (i) Property over which the decedent alone, immediately before death, held a
664 presently exercisable general power of appointment.

665 (ii) The amount included is the value of the property subject to the power, to the extent
666 the property passed at the decedent's death, by exercise, release, lapse, in default, or otherwise,
667 to or for the benefit of any person other than the decedent's estate or surviving spouse.

668 (b) (i) The decedent's fractional interest in property held by the decedent in joint
669 tenancy with the right of survivorship.

670 (ii) The amount included is the value of the decedent's fractional interest, to the extent
671 the fractional interest passed by right of survivorship at the decedent's death to a surviving joint
672 tenant other than the decedent's surviving spouse.

673 (c) (i) The decedent's ownership interest in property or accounts held in POD, TOD, or
674 co-ownership registration with the right of survivorship.

675 (ii) The amount included is the value of the decedent's ownership interest, to the extent
676 the decedent's ownership interest passed at the decedent's death to or for the benefit of any
677 person other than the decedent's estate or surviving spouse.

678 (d) (i) Proceeds of insurance, including accidental death benefits, on the life of the

679 decedent, if the decedent owned the insurance policy immediately before death or if and to the
680 extent the decedent alone and immediately before death held a presently exercisable general
681 power of appointment over the policy or its proceeds.

682 (ii) The amount included:

683 (A) is the value of the proceeds, to the extent they were payable at the decedent's death
684 to or for the benefit of any person other than the decedent's estate or surviving spouse; and

685 (B) may not exceed the greater of the cash surrender value of the policy immediately
686 prior to the death of the decedent or the amount of premiums paid on the policy during the
687 decedent's life.

688 (2) Property transferred in any of the forms described in this Subsection (2) by the
689 decedent during marriage:

690 (a) (i) Any irrevocable transfer in which the decedent retained the right to the
691 possession or enjoyment of, or to the income from, the property if and to the extent the
692 decedent's right terminated at or continued beyond the decedent's death.

693 (ii) An irrevocable transfer in trust which includes a [~~restrictive~~] restriction on transfer
694 [~~on~~] of the decedent's[, settlor's, or beneficiary's interest] interest as settlor and beneficiary as
695 described in Section 25-6-14.

696 (iii) The amount included is the value of the fraction of the property to which the
697 [~~decedent's~~] right or restriction related, to the extent the fraction of the property passed outside
698 probate to or for the benefit of any person other than the decedent's estate or surviving spouse.

699 (b) (i) Any transfer in which the decedent created a power over income or property,
700 exercisable by the decedent alone or in conjunction with any other person, or exercisable by a
701 nonadverse party, to or for the benefit of the decedent, creditors of the decedent, the decedent's
702 estate, or creditors of the decedent's estate.

703 (ii) The amount included with respect to a power over property is the value of the
704 property subject to the power, and the amount included with respect to a power over income is
705 the value of the property that produces or produced the income, to the extent the power in
706 either case was exercisable at the decedent's death to or for the benefit of any person other than
707 the decedent's surviving spouse or to the extent the property passed at the decedent's death, by
708 exercise, release, lapse, in default, or otherwise, to or for the benefit of any person other than
709 the decedent's estate or surviving spouse.

710 (iii) If the power is a power over both income and property and Subsection (2)(b)(ii)
711 produces different amounts, the amount included is the greater amount.

712 (3) Property that passed during marriage and during the two-year period next preceding
713 the decedent's death as a result of a transfer by the decedent if the transfer was of any of the
714 types described in this Subsection (3).

715 (a) (i) Any property that passed as a result of the termination of a right or interest in, or
716 power over, property that would have been included in the augmented estate under Subsection
717 (1)(a), (b), or (c), or under Subsection (2), if the right, interest, or power had not terminated
718 until the decedent's death.

719 (ii) The amount included is the value of the property that would have been included
720 under Subsection (1)(a), (b), (c), or Subsection (2) if the property were valued at the time the
721 right, interest, or power terminated, and is included only to the extent the property passed upon
722 termination to or for the benefit of any person other than the decedent or the decedent's estate,
723 spouse, or surviving spouse.

724 (iii) (A) As used in this Subsection (3)(a), "termination," with respect to a right or
725 interest in property, occurs when the right or interest terminated by the terms of the governing
726 instrument or the decedent transferred or relinquished the right or interest, and, with respect to
727 a power over property, occurs when the power terminated by exercise, release, lapse, default, or
728 otherwise.

729 (B) With respect to a power described in Subsection (1)(a), "termination" occurs when
730 the power terminated by exercise or release, but not otherwise.

731 (b) (i) Any transfer of or relating to an insurance policy on the life of the decedent if
732 the proceeds would have been included in the augmented estate under Subsection (1)(d) had
733 the transfer not occurred.

734 (ii) The amount included:

735 (A) is the value of the insurance proceeds to the extent the proceeds were payable at
736 the decedent's death to or for the benefit of any person other than the decedent's estate or
737 surviving spouse; and

738 (B) may not exceed the greater of the cash surrender value of the policy immediately
739 prior to the death of the decedent or the amount of premiums paid on the policy during the
740 decedent's life.

741 (c) (i) Any transfer of property, to the extent not otherwise included in the augmented
742 estate, made to or for the benefit of a person other than the decedent's surviving spouse.

743 (ii) The amount included is the value of the transferred property to the extent the
744 aggregate transfers to any one donee in either of the two years exceeded \$10,000.

745 Section 7. Section **75-2-1207 (Effective 12/31/03)** is amended to read:

746 **75-2-1207 (Effective 12/31/03). Prospective application.**

747 (1) (a) Except as extended by Subsection (2), this section applies to a nonvested
748 property interest or a power of appointment that is created on or after [~~May 5, 2003~~] December
749 31, 2003.

750 (b) For purposes of this section, a nonvested property interest or a power of
751 appointment created by the exercise of a power of appointment is created when:

752 (i) the power is irrevocably exercised; or

753 (ii) a revocable exercise becomes irrevocable.

754 (2) If a nonvested property interest or a power of appointment was created before [~~May~~
755 ~~5, 2003~~] December 31, 2003, and is determined in a judicial proceeding, commenced on or
756 after [~~May 5, 2003~~] December 31, 2003, to violate Utah's rule against perpetuities as that rule
757 existed before [~~May 5, 2003~~] December 31, 2003, a court upon the petition of an interested
758 person may reform the disposition:

759 (a) in the manner that most closely approximates the transferor's manifested plan of
760 distribution; and

761 (b) that is within the limits of the rule against perpetuities applicable when the
762 nonvested property interest or power of appointment was created.

763 (3) Section 75-2-1203 applies to a trust instrument or conveyance executed on or after
764 [~~May 5, 2003~~] December 31, 2003, if the trust instrument or conveyance creates a contingent
765 power of appointment or nonvested property interest subject to the exercise of a power of
766 appointment that creates a new or successive power of appointment.

767 Section 8. Section **75-2-1209** is enacted to read:

768 **75-2-1209. Real estate conveyed to a trust under the Statutory Rule Against**
769 **Perpetuities.**

770 On or after the effective date, when title to real property is granted to the trustee of a
771 trust governed by Title 75, Chapter 2, Part 12, Uniform Statutory Rule Against Perpetuities, the

772 terms of the trust, provisions regarding the appointment of successor trustees, and the names
773 and addresses of successor trustees must be disclosed in accordance with Section 75-7-409.

774 Section 9. Section **75-7-201 (Effective 12/31/03)** is amended to read:

775 **75-7-201 (Effective 12/31/03). Court -- Exclusive jurisdiction of trusts.**

776 (1) (a) The court has exclusive jurisdiction of proceedings initiated by interested parties
777 concerning the internal affairs of trusts [~~administered in this state under Subsection~~
778 ~~59-10-103(1)(r), trusts described in Section 75-7-208 and Subsections 75-7-601(2) and (3), and~~
779 ~~proceedings under Section 25-6-14].~~

780 (b) Proceedings which may be maintained under this section [~~include~~] are those
781 concerning:

782 (i) the administration and distribution of trusts;

783 (ii) the declaration of rights; and

784 (iii) the determination of other matters involving trustees and beneficiaries of trusts.

785 (c) [~~This Subsection (1) applies~~] These include, but are not limited to proceedings to:

786 (i) appoint or remove a trustee;

787 (ii) review a trustee's fees;

788 (iii) review and settle interim or final accounts;

789 (iv) ascertain beneficiaries;

790 (v) determine any question arising in the administration or distribution of any trust,
791 including questions of construction of trust instruments;

792 (vi) instruct trustees;

793 (vii) determine the existence or nonexistence of any immunity, power, privilege, duty,
794 or right; and

795 (viii) order transfer of administration of the trust to another state upon appropriate
796 conditions as may be determined by the court or accept transfer of administration of a trust
797 from another state to this state upon such conditions as may be imposed by the supervising
798 court of the other state, unless the court in this state determines that these conditions are
799 incompatible with its own rules and procedures.

800 (2) (a) A proceeding under this section does not result in continuing supervision by the
801 court over the administration of the trust.

802 (b) The management and distribution of a trust estate, submission of accounts and

803 reports to beneficiaries, payment of trustee's fees and other obligations of a trust, acceptance
 804 and change of trusteeship, and other aspects of the administration of a trust shall proceed
 805 expeditiously consistent with the terms of the trust, free of judicial intervention and without
 806 order, approval or other action of any court, subject to the jurisdiction of the court as invoked
 807 by interested parties or as otherwise exercised as provided by law.

808 Section 10. Section **75-7-202 (Effective 12/31/03)** is amended to read:

809 **75-7-202 (Effective 12/31/03). Effect of administration in this state -- Consent to**
 810 **jurisdiction.**

811 (1) The trustee submits personally to the jurisdiction of the courts of this state
 812 regarding any matter involving the trust if ~~[(a)]~~ the trustee ~~[accepts the trusteeship]~~ acts as
 813 trustee of a trust administered in this state~~[:]~~.

814 ~~[(b) the trustee moves any administration to this state; or]~~

815 ~~[(c) the trustee is a trustee of a trust described in Subsections 75-7-601(2) and (3).]~~

816 (2) To the extent of the beneficial interests in a trust administered in this state, the
 817 beneficiaries of the trust are subject to the jurisdiction of the courts of this state regarding any
 818 matter involving the trust. By accepting a distribution from such a trust, the recipient submits
 819 personally to the jurisdiction of the courts of this state regarding any matter involving the trust.

820 (3) By accepting the delegation of a trust function from the trustee of a trust
 821 administered in this state, the agent submits to the jurisdiction of the courts of this state
 822 regarding any matter involving the trust.

823 ~~[(3)]~~ (4) Unless otherwise designated in the trust instrument, a trust is administered in
 824 this state if it meets the requirements of Subsection 59-10-103(1)(r)(ii).

825 ~~[(4) By accepting the delegation of a trust function from the trustee of a trust~~
 826 ~~administered in this state, the agent submits to the jurisdiction of the courts of this state~~
 827 ~~regarding any matter involving the trust.]~~

828 Section 11. Section **75-7-204 (Effective 12/31/03)** is amended to read:

829 **75-7-204 (Effective 12/31/03). Trust proceedings -- Dismissal of matters relating**
 830 **to foreign trusts.**

831 (1) ~~[Except as provided in Subsection (2), the]~~ The court may not, over the objection of
 832 a party, entertain proceedings under Section 75-7-201 involving a trust which:

833 (a) is under the continuing supervision of a foreign court; ~~[or]~~

834 (b) is registered in another state~~[-]; or~~
 835 (c) has a fiduciary which transacts a major portion of its trust administration in another
 836 state.

837 (2) Notwithstanding Subsection (1), ~~[a]~~ the court may entertain a proceeding regarding
 838 any matter involving a trust if:

839 (a) all appropriate parties could not be bound by litigation in the courts of the other
 840 state; or

841 (b) the interests of justice would be seriously impaired~~[-or]~~.

842 ~~[(c) the trust is a trust described in Subsection 75-7-601(3), Section 75-7-208, or the~~
 843 ~~proceeding is a proceeding under Section 25-6-14, or a trust is administered in this state as set~~
 844 ~~forth in Subsection 59-10-103(1)(r):]~~

845 (3) The court may condition a stay or dismissal of a proceeding on the consent of any
 846 party to the jurisdiction of the courts of another state, or the court may grant a continuance or
 847 enter any other appropriate order.

848 Section 12. Section **75-7-208 (Effective 12/31/03)** is amended to read:

849 **75-7-208 (Effective 12/31/03). Governing law.**

850 (1) For purposes of this section:

851 (a) "Foreign trust" means a trust that is created in another state or country and valid in
 852 the state or country in which the trust is created.

853 (b) "State law provision" means a provision that the laws of a named state govern the
 854 validity, construction, and administration of a trust.

855 ~~[(1)]~~ (2) If a trust ~~[provides by its terms that it is governed by the laws of]~~ has a state
 856 law provision specifying this state, the ~~[meaning and effect of the terms]~~ validity, construction,
 857 and administration of the trust are to be governed by the laws of this state if any administration
 858 of the trust is done in this state~~[-including without limitation items listed in Subsection (3)(a)~~
 859 ~~or (c)].~~

860 ~~[(2) If]~~ (3) For all trusts created on or after December 31, 2003, if a trust does not
 861 [specify a governing state law, the meaning and effect of the terms] have a state law provision,
 862 the validity, construction, and administration of the trust are to be governed by the laws of this
 863 state if the trust is administered in this state ~~[under Subsection 59-10-103(1)(r) or is a trust~~
 864 ~~described in Subsections 75-7-601(2) and (3)].~~

865 ~~[(3) A provision that the laws of this state govern the validity, construction, and~~
866 ~~administration of the trust and that the trust is subject to the jurisdiction of this state is valid,~~
867 ~~effective, and conclusive for the trust if:]~~

868 ~~[(a) some or all the trust assets are deposited in this state in:]~~

869 ~~[(i) a transaction account described in Subsection 7-1-103(34);]~~

870 ~~[(ii) a savings described in Subsection 7-1-103(29);]~~

871 ~~[(iii) a certificate of deposit;]~~

872 ~~[(iv) a brokerage account;]~~

873 ~~[(v) a trust company fiduciary account; or]~~

874 ~~[(vi) account or deposit located in this state that is similar to an account listed in this~~
875 ~~Subsection (3)(a);]~~

876 ~~[(b) the trust is being administered by at least one qualified trustee; and]~~

877 ~~[(c) any administration of the trust occurs in this state, including:]~~

878 ~~[(i) physically maintaining trust records in this state; and]~~

879 ~~[(ii) preparing or arranging for the preparation of an income tax return that must be~~
880 ~~filed by the trust.]~~

881 ~~[(4) The validity, construction, and administration of a trust with a state jurisdiction~~
882 ~~provision is determined by the laws of this state, including provisions concerning the:]~~

883 ~~[(a) capacity of the settlor;]~~

884 ~~[(b) powers, obligations, liabilities, and rights of the trustee;]~~

885 ~~[(c) appointment and removal of the trustees; and]~~

886 ~~[(d) existence and extent of powers, conferred or retained, including:]~~

887 ~~[(i) a trustee's discretionary powers;]~~

888 ~~[(ii) the powers retained by a beneficiary of the trust; and]~~

889 ~~[(iii) the validity of the exercise of a power.]~~

890 (4) If a foreign trust is administered in this state as provided in this section, the
891 following provisions are effective and enforceable under the laws of this state:

892 (a) a provision in the trust that restricts the transfer of trust assets in a manner similar
893 to Section 25-6-14;

894 (b) a provision that allows the trust to be perpetual; or

895 (c) a provision that is not expressly prohibited by the law of this state.

896 (5) A foreign trust that moves its administration to this state is valid whether or not the
897 trust complied with the laws of this state at the time of the trust's creation or after the trust's
898 creation.

899 (6) Unless otherwise designated in the trust instrument, a trust is administered in this
900 state if it meets the requirements of Subsection 59-10-103(1)(r)(ii).

901 Section 13. Section **75-7-402** is amended to read:

902 **75-7-402. Powers of trustees conferred by this part.**

903 (1) From time of creation of the trust until final distribution of the assets of the trust, a
904 trustee has the power to perform, without court authorization, every act which a prudent man
905 would perform for the purposes of the trust, including the powers specified in Subsection (3).

906 (2) In the exercise of his powers, including the powers granted by this part, a trustee
907 has a duty to act with due regard to his obligation as a fiduciary, according to the standard set
908 forth in Section 75-7-302.

909 (3) A trustee has the power, subject to Subsections (1) and (2) to:

910 (a) collect, hold, and retain trust assets received from a trustor until, in the judgment of
911 the trustee, disposition of the assets should be made. The assets may be retained even though
912 they include an asset in which the trustee is personally interested;

913 (b) receive additions to the assets of the trust;

914 (c) continue or participate in the operation of any business or other enterprise and
915 effect incorporation, dissolution, or other change in the form of the organization of the business
916 or enterprise;

917 (d) acquire an undivided interest in a trust asset in which the trustee, in any trust
918 capacity, holds an undivided interest;

919 (e) invest and reinvest trust assets in bonds, notes, stocks of corporations regardless of
920 class, real estate or any interest in real estate, interests in trusts or in any other property, or
921 individual interests in property wherever it is located;

922 (f) invest and reinvest trust assets in securities of an open-end or closed-end type
923 management investment company or investment trust which is registered under the Investment
924 Company Act of 1940, as amended, including securities of any investment company or
925 investment trust that is affiliated with or a subsidiary of the trustee, or to which the trustee or
926 its affiliate or subsidiary provides a service such as that of an investment advisor, custodian,

927 transfer agent, registrar, sponsor, distributor, manager, or otherwise, for which it receives
928 reasonable remuneration for such service;

929 (g) deposit or invest trust funds in a bank, including a bank operated by the trustee;

930 (h) (i) acquire or dispose of an asset, for cash or on credit, at public or private sale;

931 (ii) manage, develop, improve, exchange, partition, change the character of, or abandon
932 a trust asset or any interest therein; and

933 (iii) encumber, mortgage, or pledge a trust asset for a term within or extending beyond
934 the term of the trust, in connection with the exercise of any power vested in the trustee;

935 (i) make ordinary or extraordinary repairs or alterations in buildings or other structures,
936 or demolish any improvements, raze existing or erect new party walls or buildings;

937 (j) (i) subdivide, develop, or dedicate land to public use;

938 (ii) make or obtain the vacation of plats and adjust boundaries;

939 (iii) adjust differences in valuation on exchange or partition by giving or receiving
940 consideration; or

941 (iv) dedicate easements to public use without consideration;

942 (k) enter, for any purpose into a lease as lessor or lessee with or without an option to
943 purchase or renew for a term within or extending beyond the term of the trust;

944 (l) enter into a lease or arrangement for exploration and removal of minerals or other
945 natural resources or enter into a pooling or unitization agreement;

946 (m) grant an option involving disposition of a trust asset, or take an option for the
947 acquisition of any asset;

948 (n) vote a security, in person or by general or limited proxy;

949 (o) pay calls, assessments, and any other sums chargeable or accruing against or on
950 account of securities;

951 (p) sell or exercise stock subscription or conversion rights, consent, directly or through
952 a committee or other agent, to the reorganization, consolidation, merger, dissolution, or
953 liquidation of a corporation or other business enterprise;

954 (q) hold property in the name of a nominee or in other form without disclosure of the
955 trust so that title to the property may pass by delivery, but the trustee is liable for any act of the
956 nominee in connection with the property so held;

957 (r) insure the assets of the trust against damage or loss and the trustee against liability

- 958 with respect to third persons;
- 959 (s) (i) borrow money to be repaid from trust assets or otherwise;
- 960 (ii) advance money to be repaid from trust assets or otherwise; or
- 961 (iii) advance money for the protection of the trust, and for all expenses, losses, and
- 962 liabilities sustained in the administration of the trust or because of the holding or ownership of
- 963 any trust assets, for which advances with any interest the trustee has a lien on the trust assets as
- 964 against the beneficiary;
- 965 (t) (i) pay or contest any claim;
- 966 (ii) settle a claim by or against the trust by compromise, arbitration, or otherwise; and
- 967 (iii) release, in whole or in part, any claim belonging to the trust to the extent that the
- 968 claim is uncollectible;
- 969 (u) pay taxes, assessments, compensation of the trustee, and other expenses incurred in
- 970 the collection, care, administration, and protection of the trust;
- 971 (v) allocate items of income or expense to either trust income or principal, as provided
- 972 by law, including creation of reserves out of income for depreciation, obsolescence,
- 973 amortization, or for depletion in mineral or timber properties;
- 974 (w) notwithstanding the provisions of Section 75-5-102, pay any sum distributable to a
- 975 beneficiary under legal disability, without liability to the trustee, by paying the sum to the
- 976 beneficiary or by paying the sum for the use of the beneficiary either to a legal representative
- 977 appointed by the court, or if none, to a relative;
- 978 (x) effect distribution of property and money in divided or undivided interests and
- 979 adjust resulting differences in valuation;
- 980 (y) (i) employ persons, including attorneys, auditors, investment advisers, or agents,
- 981 even if they are associated with the trustee, to advise or assist the trustee in the performance of
- 982 his administrative duties;
- 983 (ii) act without independent investigation upon their recommendations; and
- 984 (iii) instead of acting personally, employ one or more agents to perform any act of
- 985 administration, whether or not discretionary;
- 986 (z) prosecute or defend actions, claims, or proceedings for the protection of trust assets
- 987 and of the trustee in the performance of his duties; and
- 988 (aa) execute and deliver all instruments which will accomplish or facilitate the exercise

989 of the powers vested in the trustee.

990 (4) If a governing instrument or order requires or authorizes investment in United
991 States government obligations, a trustee may invest in those obligations, either directly or in the
992 form of securities or other interests, in any open-end or closed-end management type
993 investment company or investment trust registered under the provisions of the Investment
994 Company Act of 1940, 15 U.S.C. Sections 80a-1 through 80a-64 if:

995 (a) the portfolio of the investment company or investment trust is limited to United
996 States government obligations, and repurchase agreements are fully collateralized by United
997 States government obligations; and

998 (b) the investment company or investment trust takes delivery of the collateral for any
999 repurchase agreement either directly or through an authorized custodian.

1000 (5) The trustee may exercise the powers set forth in this section and in the trust either
1001 in the name of the trust or in the name of the trustee as trustee, specifically including the right
1002 to take title to encumber or convey assets, including real property, in the name of the trust.
1003 This Subsection (5) applies to a trustee's exercise of trust powers both prior to and after the
1004 effective date of this Subsection (5). After the effective date of this Subsection (5), for
1005 recording purposes, the name and address of at least one trustee must be included on all
1006 recorded documents affecting real property to which the trust is a party in interest.

1007 (6) (a) If the fair market value of a trust is less than \$25,000, the trustee may terminate
1008 the trust by the following procedure:

1009 (i) the trustee shall determine a plan of distribution that agrees, as nearly as possible,
1010 with the trust's dispositive plan;

1011 (ii) the trustee shall give notice to all interested persons of its intent to distribute the
1012 assets in accordance with the plan unless an interested person objects within 20 days after the
1013 date of the notice;

1014 (iii) if no objection is received within 20 days after the date of the notice, the trustee
1015 shall proceed to distribute the trust assets in accordance with the plan;

1016 (iv) if the trustee receives a written objection to the plan within 20 days of the date of
1017 the notice, the trustee shall not distribute the assets of the trust, but may then petition the court
1018 for an order authorizing distribution in accordance with the plan. The court shall have plenary
1019 authority to approve, modify, or reject the trustee's petition.

1020 (b) The existence of a spendthrift or similar provision shall not effect the trustee's
1021 powers under this Subsection (6) unless the trust instrument specifically provides that the
1022 trustee shall not have the power to terminate the trust.

1023 (7) Any real property titled in a trust which has a restriction on transfer described in
1024 Section 25-6-14 shall include in the title the words "asset protection trust".

1025 Section 14. Section ~~75-7-405.5~~ is enacted to read:

1026 **75-7-405.5. Vacancy in trusteeship -- Appointment of successor.**

1027 (1) A vacancy in a trusteeship occurs if:

1028 (a) a person designated as trustee rejects the trusteeship;

1029 (b) a person designated as trustee cannot be identified or does not exist;

1030 (c) a trustee resigns;

1031 (d) a trustee is disqualified or removed;

1032 (e) a trustee dies; or

1033 (f) a guardian or conservator is appointed for an individual serving as trustee.

1034 (2) If one or more cotrustees remain in office, a vacancy in a trusteeship need not be
1035 filled. A vacancy in a trusteeship must be filled if the trust has no remaining trustee.

1036 (3) A vacancy in a trusteeship of a noncharitable trust that is required to be filled must
1037 be filled in the following order of priority:

1038 (a) by a person designated in the terms of the trust to act as successor trustee;

1039 (b) by a person appointed by unanimous agreement of the qualified beneficiaries; or

1040 (c) by a person appointed by the court.

1041 (4) A vacancy in a trusteeship of a charitable trust that is required to be filled must be
1042 filled in the following order of priority:

1043 (a) by a person designated in the terms of the trust to act as successor trustee;

1044 (b) by a person selected by the charitable organizations expressly designated to receive
1045 distributions under the terms of the trust if the attorney general concurs in the selection; or

1046 (c) by a person appointed by the court.

1047 (5) Whether or not a vacancy in a trusteeship exists or is required to be filled, the court
1048 may appoint an additional trustee or special fiduciary whenever the court considers the
1049 appointment necessary for the administration of the trust.

1050 Section 15. **Repealer.**

1051 This bill repeals:
1052 Section **75-7-601 (Effective 12/31/03), Situs.**
1053 Section **75-7-602 (Effective 12/31/03), Challenge to trusts.**
1054 Section **75-7-603 (Effective 12/31/03), Nonqualified persons serving as trustee.**
1055 Section 16. **Effective date.**
1056 If approved by two-thirds of all the members elected to each house, this bill takes effect
1057 on December 31, 2003, except Sections 59-10-114 and 59-10-202 take effect on January 1,
1058 2004.

Legislative Review Note
as of 10-20-03 12:48 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

Interim Committee Note
as of 11-14-03 9:11 AM

The Judiciary Interim Committee recommended this bill.